



Frequently Asked Questions about the Endangered Species Act (ESA)

(updated December 2004)

Q. What is the Endangered Species Act?

A. The Endangered Species Act, often abbreviated as the ESA, is a federal law passed by congress in 1973. The ESA is a powerful environmental law intended to slow the rate at which plants and animals are going extinct in the United States. Its goal is to conserve and restore native species for future generations of U.S. citizens to enjoy and use. The ESA is administered by the Department of Interior (Fish and Wildlife Service) for land-based and fresh-water species, and by the Department of Commerce (National Marine Fisheries Service, or NOAA Fisheries) for marine species. [For more information see <http://endangered.fws.gov/> or http://www.nmfs.noaa.gov/prot_res/laws/ESA/ESA_Home.html]

Q. Are there animals and plants listed under the ESA in the Pacific Northwest?

A. Yes. Approximately 120 species of plants and animals are listed under the ESA in Oregon, Idaho and Washington. They include the western lily, grizzly bear, silverspot butterfly, green sea turtle, brown pelican, several species of marine mammals, and several populations of Pacific salmon and steelhead. [For more information see <http://endangered.fws.gov/wildlife.html>]

Q. How does an animal or plant get added to the list of endangered species?

A. An individual or organization may petition the federal government to consider a plant or animal for inclusion on the list. Or the federal government may consider a species on its own. Either way, a status review is conducted that involves the government reviewing and analyzing all the scientific information available on that plant or animal. The process includes at least one, and depending on how far the evaluation goes, several opportunities for the public to view and participate in the status review. It's the government's responsibility to make the final listing determination, and it must document and explain its finding. [For more information see <http://endangered.fws.gov/wildlife.html>]

Q. Are there different levels of protection given species at higher or lower risk of extinction?

A. Yes, the ESA has three categories of risk. It defines:

Endangered species as any plant or animal that is in danger of extinction throughout all or a significant portion of its range. These are populations that are still alive, but exist in numbers so low or are decreasing so rapidly that they are in immediate danger of extinction.

Threatened species as those that are likely to become endangered throughout all or a significant portion of their range in the foreseeable future. These are populations that have been in decline, and unless some type of protection is provided they will slide downward toward extinction.

Species of Concern as those believed to have declining populations and/or habitat and should be watched in case federal protection becomes required at some point. [For more information see <http://endangered.fws.gov/wildlife.html>]

Q. What happens once a species is listed under the ESA?

A. Listing under the ESA initiates several actions and restrictions:

The listing agency (Fish & Wildlife or NOAA Fisheries) must evaluate actions funded, carried out or authorized by the federal government to ensure those actions aren't likely to damage the listed species. [For more information see

<http://endangered.fws.gov/consultations/index.html> and www.nmfs.noaa.gov/pcts/consultation/]

The listing agency designates critical habitat for the species so federal agencies will be better able to understand and evaluate their actions in those areas important to listed species.

The listing agency may define "take" prohibitions so everyone can adjust their actions so as not to take (without authorization) the listed species. (Take includes harming, harassing, pursuing, hunting killing, wounding, capturing, and so on.)

The listing agency initiates recovery planning for the species.

Q. Once on the ESA list, can a species ever be removed?

A. Yes. There are three ways for a species to be removed from the list. It could recover and no longer require ESA protection; the gray whale is an example. The species could undergo taxonomic revision and no longer qualify for ESA listing, as happened with Umpqua River cutthroat trout. Or the species can go extinct, as did the dusky seaside sparrow. [For more information see <http://endangered.fws.gov/>]

Q. What can I do to help recover ESA-listed species?

A. You've already started by showing an interest in this material. The success of species recovery and carrying out the ESA are directly linked to the interest and energy of all U.S. citizens in participating. There are many ways to get involved. [For more information see <http://endangered.fws.gov/> or http://www.nmfs.noaa.gov/prot_res/laws/ESA/ESA_Home.html]

Q. What is the Marine Mammal Protection Act?

The Marine Mammal Protection Act of 1972 (MMPA) established a moratorium, with certain exceptions, on the taking of marine mammals in U.S. waters and by U.S. citizens on the high seas, and on importing marine mammals and marine mammal products into the United States. The term "take" is defined as "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill any marine mammal." NOAA Fisheries is responsible for the conservation and management of pinnipeds (other than walruses) and cetaceans under the MMPA. Part of the responsibility involves monitoring populations of marine mammals to make sure that they stay at optimum levels. If a population falls below its optimum level, it is designated as "depleted," and a conservation plan is developed to guide research and management actions to restore the population to healthy levels. Conservation plans have the same requirements as recovery plans under the ESA. [For more information see

http://www.nmfs.noaa.gov/prot_res/laws/MMPA/MMPA.html]

Q. Does the ESA provide protection to listed marine mammals beyond those already provided under the MMPA?

The MMPA and ESA both have provisions that prohibit "take" of animals in the population. The definitions of "take" for MMPA and ESA are similar. The ESA, however, requires NOAA Fisheries to identify "critical habitat." Under Section 7, any federal agency must consult with NOAA Fisheries on any action that may adversely affect a threatened species or its critical habitat. Consultations occur with federal action agencies under ESA Section 7 to avoid, minimize or mitigate impacts of their activities on listed species. NOAA Fisheries also reviews

non-federal activities that may affect species listed under the ESA, and issues permits under Section 10 for incidental take of those species and for scientific research and enhancement purposes.

If Southern Residents are listed, the Northwest Region anticipates an increase in the workload for ESA Section 7 consultations. For many projects, consultations are already underway and killer whale prey and habitat concerns are already being addressed for listed salmon. There may be additional issues to address during ongoing consultations for some projects, and new consultations specific to killer whales. Additional staff and resources will be needed for increased interagency coordination under Section 7.